

**REMARKS**

This Application has been carefully reviewed in light of the Office Action mailed April 5, 2004 (the "Office Action"). At the time of the Office Action, Claims 1-72 were pending in the Application. Applicants amend Claims 1, 4-5, 12, 15-16, 19-20, 30, 33-34, 41, 48, 51-52, 59 and 62-63 and add new Claims 73 and 74. Applicants respectfully request reconsideration and favorable action in this case.

**Section 102 Rejections - Pickering**

The Office Action rejects Claims 1-9, 11-22, 30-38, 40-46, 48-56 and 58-65 under 35 U.S.C. §102(e) as being unpatentable over U.S. Patent No. 6,628,666 issued to Pickering et al. ("*Pickering*"). Applicants respectfully traverse these rejections.

To anticipate a claim, each and every limitation must be found in a reference. *See* MPEP § 2131. "The identical invention must be shown in as complete detail as is contained in the . . . claim." *Richardson v. Suzuki Motor Co.*, 9 USPQ 2d 1913, 1920 (Fed. Cir. 1989) (*emphasis added*). In addition, "[t]he elements must be arranged as required by the claim . . . ." *In re Bond*, 15 USPQ 2d 1566 (Fed. Cir. 1990) (*emphasis added*).

Claim 1 recites "prior to establishing the VoP call, determining whether bandwidth is available on a communication link between the origination and the destination." Claims 30, 41 and 48 recite similar elements. *Pickering* discloses monitoring a data network call that is already established for adequate bandwidth. *See Pickering*, Abstract; col. 3, lines 39-40; . *Pickering* also states that it is directed to transforming the media type of a call "while it is still in progress" (i.e., call is already established). *Id.*, col. 1, lines 11-12. Moreover, *Pickering* specifically discloses that the Internet Protocol call is terminated after a conventional telephone call is established, which further indicates that the IP call is already established before bandwidth is monitored. *See id.*, Abstract; col. 3, lines 43-46; col. 6, lines 59-60. Thus, *Pickering* does not disclose, teach or suggest determining whether bandwidth is available on a communication link between the origination and the destination prior to establishing the VoP call. Therefore, Applicants respectfully submit that Claims 1, 30, 41 and 48 are patentable over the cited art used in the rejections and request that the rejections of Claims 1, 30, 41 and 48 be withdrawn.

Claim 12 recites a processor operable to receive a call denial message "indicating that insufficient bandwidth exists to establish a phone call originated by a call originator." Claim 59 recites a similar element with respect to software embodied in a computer readable media. Claim 15 recites receiving a rejection "of the establishment" of a Voice over Packet (VoP) call at the origination. Claims 19 and 62 recite similar elements. As discussed above, *Pickering* is directed to monitoring a data network for insufficient bandwidth with respect to calls that are already established and "still in progress." *Pickering*, Abstract; col. 1, lines 11-12; col. 3, lines 39-40. Thus, *Pickering* does not disclose, teach or suggest the receipt of a call denial message indicating that insufficient bandwidth exists to establish a phone call or the receipt of a rejection "of the establishment" of a VoP call. Therefore, Applicants respectfully submit that Claims 12, 15, 19, 59 and 62 are patentable over the cited art used in the rejections and request that the rejections of Claims 12, 15, 19, 59 and 62 be withdrawn.

Claims 2-9 and 11 each depends, either directly or indirectly, from Claim 1; Claims 13 and 14 each depends from Claim 12; Claims 16-18 each depends from Claim 15; Claims 20-22 each depends from Claim 19; Claims 31-38 and 40 each depends, either directly or indirectly, from Claim 30; Claims 42-46 each depends, either directly or indirectly, from Claim 41; Claims 49-56 and 58 each depends, either directly or indirectly, from Claim 48; Claims 60 and 61 each depends from Claim 59; and Claims 63-65 each depends from Claim 62. Claims 1, 12, 15, 19, 30, 41, 48, 59 and 62 are shown above to be allowable. Thus, for at least the reasons discussed above with respect to Claims 1, 12, 15, 19, 30, 41, 48, 59 and 62, Applicants respectfully request that the rejections of Claims 2-9, 11, 13-14, 16-18, 20-22, 31-38, 40, 42-46, 49-56, 58, 60-61 and 63-65 be withdrawn.

#### **Section 103 Rejections - Pickering-Ash**

The Office Action rejects Claims 10, 23-29, 39, 47, 57 and 66-72 under 35 U.S.C. §103(a) as being unpatentable over *Pickering* in view of U.S. Patent No. 6,590,867 issued to Ash et al. ("*Ash*"). Applicants respectfully traverse these rejections.

Claim 10, 39, 47 and 57 depend, either directly or indirectly, from Claims 1, 30, 41 and 48. Claims 1, 30, 41 and 48 are shown above to be allowable. Thus, for at least the

reasons discussed above with respect to Claims 1, 30, 41 and 48, Applicants respectfully request that the rejections of Claims 10, 39, 47 and 57 be withdrawn.

Claim 23 recites "communicating the call setup request to a second call manager coupled to the first call manager using a second communications link." Claim 66 recites a similar element. The Office Action suggests that *Pickering* discloses each element of Claim 23 except for "checking bandwidth availability on first and second links." Office Action, page 4. However, the Office Action does not cite any portion of *Pickering* that discloses communicating a call setup request to a second call manager coupled to a first call manager, nor does *Pickering* disclose, teach or suggest this element. Therefore, Applicants respectfully submit that Claims 23 and 66 are patentable over the cited art used in the rejections and request that the rejections of Claims 23 and 66 be withdrawn.

Claims 24-29 each depends, either directly or indirectly, from Claim 23 and Claims 67-72 each depends, either directly or indirectly, from Claim 66. Claims 23 and 66 are shown above to be allowable. Thus, for at least the reasons discussed above with respect to Claims 23 and 26, Applicants respectfully request that the rejections of Claims 24-29 and 67-72 be withdrawn.

### New Claims

Applicants add new Claims 73 and 74. Claims 73 and 74 contain no new matter and are fully supported by the specification as filed.

Claim 73 recites "wherein the call completion option comprises a hold option," "receiving a selection of the hold option" and "storing the call setup request in response to the selection of the hold option." *Pickering* discloses that a PSTN/ISDN call stuck in a waiting queue can be switched back to an IP call. *See Pickering*, col. 7, lines 6-14. However, this disclosure of *Pickering* of a call stuck in a queue does not provide support for receiving a selection of a hold option and storing the call setup request in response to the selection of the hold option. For example, the call in *Pickering* is not on hold or stuck in a queue because of a selection of a hold option. Therefore, Applicants respectfully request allowance of Claim 73

Claim 74 is identical in scope to original dependent Claim 8 as depending from original Claim 1. Claim 74 recites wherein presenting the call completion option comprises presenting the call completion option "using an interactive voice response system." The Office Action suggests that this element is disclosed in *Pickering* at column 7, lines 30-55 and column 8, lines 19-30. *See* Office Action, page 3. The Office Action states, with respect to *Pickering*, that "not only can client be informed of switch through pop-up window on screen and asked for permission to switch but also manual execution of call switching may be available to user and client must authorize transfer." *Id.* However, the mere disclosure of informing a client through a pop-up window and asking for permission or requiring client authorization does not disclose, teach or suggest presenting a call using an interactive voice response system. Therefore, Applicants respectfully request allowance of Claim 74.

**CONCLUSION**

Applicants have made an earnest attempt to place this case in condition for allowance. For the foregoing reasons, and for other reasons clearly apparent, Applicants respectfully request full allowance of all pending claims.

If the present application is not allowed and/or if one or more of the rejections is maintained, Applicant hereby requests a telephone conference with the Examiner and further request that the Examiner contact Chad C. Walters, Attorney for Applicant, at the Examiner's convenience at (214) 953-6511 to schedule the telephone conference.

A check in the amount of \$208.00 is enclosed to cover the fee for two additional independent claims and a check in the amount of \$180.00 is enclosed to cover the Information Disclosure Statement filing fee. No other fees are believed to be due, however, the Commissioner is hereby authorized to charge any fees or credit any overpayments to Deposit Account No. 02-0384 of Baker Botts L.L.P.

Respectfully submitted,

BAKER BOTTS L.L.P.

Attorneys for Applicants



Chad C. Walters

Reg. No. 48,022

Date: July 6, 2004

Correspondence Address:

2001 Ross Avenue, Suite 600  
Dallas, Texas 75201-2980  
(214) 953-6511

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